A

MOHAMED ALI ABDUL RAZAK

v.

SIM HOCK YONG

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
[CIVIL APPEAL NO: J-02-794-2005]

C

27 SEPTEMBER 2007

LAND LAW: *Caveat - Removal - Appeal against - Whether registered proprietor of land may caveat his land - Caveatable interest - National Land Code, s. 323(1)*

D

The appellant, the registered proprietor of the subject property, entered a caveat against the title to his land. It was removed on the respondent's application. The appellant argued that he was entitled to have his caveat remain. Thus, the only issue in the present appeal was whether a registered proprietor of land may caveat his land or not.

E

Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

F

(1) As a plain matter of statutory construction a registered proprietor does not have a caveatable interest. The relevant provision is s. 323 of the National Land Code ('Code'), which in its first subsection permits the entry of a private caveat by "any person or body claiming title to … any alienated land". A person cannot "claim" title to something the title to which is already vested in him or her. Since a registered proprietor will be unable to bring himself or herself within the terms of s. 323(1) of the Code, he or she does not have a caveatable interest. The very first requirement being absent, the caveat was properly removed by the learned judge in the instant case. *Eu Finance Bhd v. Siland Sdn Bhd* (foll); *In Re Grand Trunk Pacific Development Co Ltd* (foll); *Hiap Yiak Trading Sdn Bhd & Ors v. Hong Soon Seng Sdn Bhd* (ovrd). (para 3)

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I

Bahasa Malaysia *Translation Of Headnotes*

Perayu, pemilik berdaftar hartanah berkenaan, telah memasukkan satu kaveat terhadap hakmilik tanahnya. Kaveat telah dikeluarkan ekoran permohonan responden. Perayu berhujah bahawa kaveatnya tersebut harus dikekalkan. Berikutan itu, isu tunggal yang berbangkit dalam rayuan di sini adalah sama ada seorang pemilik berdaftar tanah boleh atau tidak mengkaveatkan tanahnya sendiri.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Menjadi satu perkara jelas pentafsiran statut bahawa seorang pemilik berdaftar tidak mempunyai sebarang kepentingan berkaveat. Peruntukan yang relevan adalah s. 323 Kanun Tanah Negara ('Kanun'), yang dalam subseksyen pertamanya membenarkan kemasukan kaveat persendirian oleh "mana-mana orang atau badan yang menuntut hakmilik kepada ... tanah berimilik". Seseorang tidak boleh "menuntut" hakmilik kepada sesuatu yang sudahpun terletakhak kepadanya. Oleh kerana seorang pemilik berdaftar tidak boleh membawa dirinya ke dalam terma-terma s. 323(1) Kanun, maka beliau tidak mempunyai suatu kepentingan berkaveat. Memandangkan bahawa syarat pertama pun sudah tidak wujud, maka kaveat dalam kes semasa telah dikeluarkan dengan wajarnya oleh yang arif hakim. *Eu Finance Bhd v. Siland Sdn Bhd* (diikuti); *In Re Grand Trunk Pacific Development Co Ltd* (diikuti); *Hiap Yiak Trading Sdn Bhd & Ors v. Hong Soon Seng Sdn Bhd* (ditolak).

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Development & Realtor Sdn Bhd [1992] 2 CLJ 1175; [1992] 2 CLJ (Rep) 109 HC ***(refd)***

Eu Finance Bhd v. Siland Sdn Bhd [1988] 1 LNS 200 HC ***(foll)***

Hiap Yiak Trading Sdn Bhd & Ors v. Hong Soon Seng Sdn Bhd [1990] 1 CLJ 912; [1990] 2 CLJ (Rep) 117 HC ***(ovrd)***

In Re Grand Trunk Pacific Development Co Ltd [1912] 7 DLR 611 ***(foll)***

Re An Application by Haupiri Courts Ltd (No 2) [1969] NZLR 353 ***(refd)***

Sharifah Mastura v. Wan Aziz Ibrahim [1994] 1 CLJ 298 HC ***(refd)***

Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors [1974] 1 LNS 175 FC ***(refd)***

Legislation referred to:
National Land Code, s. 323(1)

For the appellant - Sri Dev Nair; M/s Devinder & Co
For the respondent - Badrol Hisham Mohd Sani (Tia Poh Loong with him); M/s Tia & Noordin

[Appeal from High Court, Johor Bahru; Originating Summons No: 24-2713-03(1)]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:

[1] The appellant who is the registered proprietor of the subject property entered a caveat against the title to his land. It was removed on the respondent's application. The appellant argued that he was entitled to have his caveat remain. The appeal was dismissed at the conclusion of arguments. The reasons for the dismissal now follow. The only issue in this appeal – and it is an issue of considerable importance – is whether a registered proprietor of land may caveat his land. There is a conflict of authority on the point.

[2] In *Eu Finance Bhd v. Siland Sdn Bhd* [1989] 1 MLJ 195, LC Vohrah J answered the question in the negative. That decision was followed by Edgar Joseph Jr J (as he then was) in *Asia Commercial Finance (M) Bhd v. Development & Realtor Sdn Bhd* [1992] 2 CLJ 1175; [1992] 2 CLJ (Rep) 109 and by Abdul Kadir Sulaiman J (later FCJ) in *Sharifah Mastura v. Wan Aziz Ibrahim* [1994] 1 CLJ 298. However, in *Hiap Yiak Trading Sdn Bhd & Ors v. Hong Soon Seng Sdn Bhd* [1990] 1 CLJ 912; [1990] 2 CLJ (Rep) 117, Richard Talalla JC resolved the issue in the opposite way.

[3] In my judgment the decision of LC Vohrah J in *Eu Finance Bhd v. Siland Sdn Bhd* is correct and that *Hiap Yiak Trading Sdn Bhd & Ors v. Hong Soon Seng Sdn Bhd* must be overruled. As a plain matter of statutory construction a registered proprietor does not have a caveatable interest. The relevant provision is s. 323 of the National Land Code 1965 which in its first subsection permits

the entry of a private caveat by "any person or body claiming title to ... any alienated land". A person cannot "claim" title to something the title to which is already vested in him or her. Take the simplest case which exemplifies the point. If V agrees to sell and transfer his land to P, then P can claim the title to the land because the agreement renders V a constructive trustee for P. See, *Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors* [1974] 1 LNS 175. But V cannot "claim" title against P because the title to the land is already vested in him. Since a registered proprietor will be unable to bring himself or herself within the terms of s. 323(1), he or she does not have a caveatable interest. The very first requirement being absent, the caveat was properly removed by the learned judge in the instant case.

[4] I would also draw support for the view I take from the decision in the Canadian case of *In Re Grand Trunk Pacific Development Co Ltd* [1912] 7 DLR 611. That was a case in which a registered proprietor had entered a caveat against the title to his land. It was held that the caveat must be removed because the caveat must be based upon a transaction from which a caveator seeks to derive his or her interest and not from the fact that he is the registered proprietor. It is apposite to note that *In Re Grand Trunk Pacific Development Co Ltd* was applied in *Re An Application by Haupiri Courts Ltd (No 2)* [1969] NZLR 353, the authority relied on by LC Vohrah J to arrive at his decision.

[5] All that remains is to say that those orders usually consequent upon a dismissal of an appeal were made in this case.

[6] My learned brothers Suriyadi bin Halim Omar and Hasan bin Lah, JJCA have seen this judgment in draft and have expressed their agreement with it.